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**FEDERATION OF BOSNIA AND HERZEGOVINA ENTERPRISE INCOME
TAX LAW**

CHAPTER I

General Provisions

Article 1. Purpose and scope of the Enterprise Income Tax Law

(1) The purpose of this Law is to establish the legal framework for the taxation of a Federation of Bosnia and Herzegovina legal person, and a non resident (seat of registration is outside of the Federation of Bosnia and Herzegovina) legal person obtaining revenue from the Federation of Bosnia and Herzegovina.

(2) Except as otherwise expressly provided by law the Minister of Finance is responsible for the issuance of the Rule Book necessary for the consistent application of the present Law.

CHAPTER II

Definitions

Article 2. Definitions of specific terms

The following definitions are to apply for purposes of the present Law:

1. FBiH – means the territory of the Federation of Bosnia and Herzegovina, including its territorial waters and the air space above the territory.

2. Legal person- means a company that independently performs its business operations for the purpose of making a profit. A legal person does not include a physical person subject to Personal Income Tax as the result of performing an independent business activity.
3. FBiH legal person – means a legal person that is established and registered in accordance with the Laws of FBiH.
4. BiH legal person – means a legal person that is established and registered in accordance with laws of Bosnia and Herzegovina, FBiH, RS, or Brcko District.
5. Foreign legal person – means a legal person that is not a BiH legal person;
6. Market price – means the amount that an unrelated buyer would pay to an unrelated seller at the same time and place for the same or similar goods or services under conditions of fair competition;
8. Interest – means any amount required to be paid in money or in kind for the use of money, whether payable under a debt obligation, or with respect to a deposit, or in accordance with a financial lease contract, installment sale or other deferred payment sale to include instruments and arrangements which provide the functional equivalent of interest;
9. Stock – means a share of ownership in a legal person;
10. Stockholder – means any legal or physical person that is the owner of stock in a legal person;
11. Dividend – means any distribution in money or in kind by a legal person to a stockholder of the legal person that is made by reason of the ownership of stocks in such legal person, except for the following:

(i) any distribution of additional stock that does not change the percentage ownership of the stock of any stockholder of the legal person;

(ii) any distribution in money or in kind made in connection with the redemption of stock of the legal person, other than a redemption of stock that is part of a plan of redemption that does not change the percentage ownership of the stock of any stockholder of the legal person; or

(iii) any distribution in money or in kind made in connection with the liquidation of a legal person.

12. Related person – means a person is related to another person if the relationship between the persons is described in any of the following:

(i) a physical person is related to a legal person if the physical person owns, directly or indirectly, 10% or more of the stock in the legal person;

(ii) (a) a legal person is related to another legal person if one legal person owns, directly or indirectly, 10% or more of the stock in the other legal person or (b) if any other legal or physical person owns, directly or indirectly, 10% or more of the stock in each legal person.

For the purposes of this definition a physical person is considered to own stock that are owned by his or her spouse, parents, grandparents, children, grandchildren or siblings.

13. Basis – means the cost or purchase price of an asset;

14. Adjusted basis – means the basis reduced by depreciation and increased by the cost of improvements and other non-deductible expenditures that increase the value of the asset;

15. Investment asset – means all assets or property held only for investment purposes and does not include property used in the legal person's economic

activity such as (a) inventory, (b) property held for sale to customers pursuant to the economic activity, (c) business property that is depreciated, (d) buildings used in the economic activity, (e) copy rights

16. Accrual accounting-means revenue is derived when the right to receive the revenue arises, and expenses are incurred when to obligation to pay arises.

17. Permanent Establishment- means a fixed place of business through which business is performed. A permanent establishment also includes:

a. A building site or construction, installation, or assembly project in FBiH, installation or structure used for the exploration or exploitation of natural resources, or supervisory activity connected therewith; and

b. where another physical or legal person is acting in behalf of the foreign legal person and has the authority to conclude contracts in the name of such foreign legal person, that foreign legal person shall be deemed to have a permanent establishment in FBiH.

CHAPTER III

Taxpayers and Tax Rate

Article 3. Taxpayers

The following legal persons are to pay tax in accordance with the provisions of this Law and are hereafter referred to as taxpayers:

(1) A FBiH legal person is subject to tax on profits obtained from any source whether from FBiH, other jurisdictions in BiH, or from a foreign state.

(2) A foreign legal person and legal person from the RS and the DB carrying out economic activity through a permanent establishment in FBiH is subject to tax on the profit that is attributable to the permanent establishment.

(2a) A FBiH legal person having a business unit in the RS and DB or in the foreign state, which is subject to tax on profits in these jurisdictions, will be credited in the FBiH up to the amount of tax that would have been paid had that profits been earned in the FBiH.

(3) A foreign legal person obtaining revenue from immovable property located in FBiH is subject to tax on the profit that is attributable to the immovable property.

(4) A foreign legal person obtaining revenue from FBiH other than revenue described in Paragraphs (2), (2a) and (3) is to be taxed by means of withholding as provided in Chapter VI.

(5) Legal persons described in Paragraphs (1), (2), (2a) and (3) shall be considered taxpayers even though its economic activity has produced a loss in the fiscal year.

(6) RS or DB legal person is subject to tax on profits in the FBiH if this profit is realized through its business units in the FBiH.

Article 4. Computation of Tax

(1) In the case of a taxpayer that is subject to tax on revenue the amount of tax for a fiscal year is determined by applying a 10% rate of tax to the tax base for such fiscal year.

(2) In the case of a foreign legal person that is subject to tax by means of withholding as provided in Chapter VI, the amount of tax to be withheld is determined in accordance with the provisions of Chapter VI.

Article 5. Persons exempt from Tax

The following legal persons are exempt from the payment of the enterprise tax:

- a) the Central Bank of the BiH;
- b) any public institutions, but only to the extent that revenue is received from the central government budget, local budgets or special government funds;
- c) a legal person that qualifies as a Humanitarian organization;;
- d) any micro-enterprise that elects to pay the micro enterprise tax in accordance with the provisions of Chapter VII.
- e) BiH legal persons that are not FBiH legal persons as these will report economic activity within the FBiH in accordance with Article 8 paragraph 3 of this law.

Article 6. Humanitarian Organizations

(1) A Humanitarian Organization as defined by Law is exempt from the payment of enterprise tax with respect to the following revenues:

- a) membership dues;
- b) contributions in cash or in kind whether as sponsorship or as donation;
- c) interest, dividends and other investment revenue to include revenue from immovable property;
- d) revenue from the budget of the Central Government, Federation Government, local budgets or special government funds;
- e) revenue from the sale or transfer of assets other than assets that are or have been used in an economic activity.

(2) In the case of a Humanitarian organization that carries out an economic activity unrelated to its humanitarian purpose, the Humanitarian organization is subject to tax on the profit in excess of 10,000 KM that is attributable to such economic activity.

(3) The Humanitarian organization must register with the Tax Administration Office in order to obtain a special identification number.

Article 7. Fiscal Year

(1) The fiscal year, which means the tax period, for a legal person is the calendar year unless prior approval is received from the Minister of Finance to use a fiscal year that is not a calendar year.

(2) In the case of a legal person that initially becomes a taxpayer during a fiscal year or ceases to be a taxpayer during a fiscal year, the fiscal year is the period during the calendar year that the legal person is a taxpayer.

(3) If a foreign legal person carries out an economic activity through a permanent establishment in FBiH, then the fiscal year of the foreign legal person may be used in determining the profit that is attributable to the permanent establishment.

Article 8 Reporting and Filing

(1) The fiscal year tax declaration should be submitted no later than 90 days after the end of the fiscal year. In the case of calendar fiscal years, not later than 31 March in the year following the calendar fiscal year in question.

(2) The Ministry of Finance may determine the necessity for an extension to deadlines specified in Article 8(1) by a period of up to 60 days.

(3) Upon request of a taxpayer seated in the Federation, the Minister of Finance and the RS Minister of Finance or the Brcko Revenue Agency Head may jointly agree to authorize the taxpayer to file a single tax declaration with the tax administration where the taxpayer is seated. The authorization to make the single declaration must be jointly agreed to by all of the respective

finance ministers or revenue head. In the event that single declaration is authorized, the DOBIT tax revenues shall be paid by the taxpayer to each of the respective Entity or District tax administrations in accordance to the share of gross revenues the taxpayer accrues in each of these respective jurisdictions.

CHAPTER IV

Determination of Tax Base

Article 9. General Tax Base Provision

The tax base for a fiscal year is the difference between total revenues and deductible expenditures for such fiscal year computed under the accrual method of accounting unless otherwise stated in this Law.

Article 10. Revenues Included in the Computation of Tax Base

(1) Taxable revenue of FBiH legal persons for the purpose of computing the tax base includes all revenue from whatever source derived whether received in cash or in kind or whether related or un-related to the legal person's economic activity except for non-included revenues specified in Article 11.

(2) In the case of revenue received in the form of property (other than cash) or services, the amount of revenue is equal to the market price of the property or services received.

Article 11. Non-Included Revenues in the Computation of the Tax Base:

The following revenues are not to be included in determining the tax base:

a) Dividends received by a FBiH legal person.

- b) Revenue resulting from the cancellation of expenditures for which no deduction was allowed, revenue from the reduction of reserves for which no deduction was allowed and revenue from the recovery of non deductible expenditures.
- c) Revenue in the form of interest from debt instruments issued and/or guaranteed by the BiH Government, FBiH government, RS Government, Brcko District of Bosnia and Herzegovina, territorial units, the Central Bank of FBiH, and banks or other financial institutions acting as an agent of the named BiH governments.
- d) Fifty per-cent (50%) of the gain from the sale or other transfer of property held only for investment purposes is not to be included in the tax base if the investment property was owned by the taxpayer for a period of 12 months and 1 day or more prior to the sale or transfer of such property.
- e) If an asset is involuntarily converted and the proceeds from the involuntary conversion are reinvested in an asset of a same or similar nature before the end of the second year following the year in which the asset is involuntarily converted, then any cash received to compensate the taxpayer for the loss of property is not to be included in taxable revenue. For this purpose, an asset is involuntarily converted if the asset is destroyed, stolen, seized, or condemned or the taxpayer is otherwise forced to transfer the property by reason of the threat or imminence of any of the foregoing.
- f) Interest on bank deposit savings.
- g) Revenue to which withholding tax has been paid by the payer of the revenue.
- h) Gain from the exchange or transfer of like kind property between taxpayers.

Article 12. Deductible expenditures

(1) Expenditures are deductible from included revenue in computing the tax base, if the expenditures directly relate to the taxpayer's revenue from the economic activity.

(2) The following expenditures are deductible subject to the following rule and limits:

- a) 50% of the cost of entertainment, meals and amusements related to the legal person's economic activity;
- b) awards to employees are limited to amounts stated in the Collective agreement;
- c) expenses for travel, meals, lodging, moving and per diem shall be limited to the amounts prescribed in the Rule Book implementing this Law.
- d) research and development expense deductions shall be taken as prescribed in the Rule Book.
- e) interest expense related to the purchase of investment property is added to the basis of such investment property.
- f) Inventory gains and losses shall be computed separately as prescribed in the Rule Book.
- g) Contributions to Humanitarian and Religious Organizations, Museums Hospitals, and State owned Theater can-not exceed 5% of the fiscal year's total revenue, any excess contribution may be carried forward 3 years to apply against future contributions.
- h) Sponsorship expenses in an amount not exceeding 3% of the fiscal year's total revenue.

(3) The following expenditures are not deductible:

- a) FBiH annual enterprise income tax;
- b) fines, interest and penalties payable by reason of the violation of any law;
- c) expenditures that relate to non-taxable income;
- d) expenditures registered in the accounting books that are not supported by documents as provided in applicable law;
- e) insurance premiums that are paid by an employer for the personal benefit of an employee except if the premiums are included in the salary of the employee;
- f) expenditures in favor of a related person to the extent that the expenditures exceed the market price for goods or services provided to the taxpayer by the related person;
- g) loss on the sale or transfer of any property between related persons;
- h) donations to political parties and lobbying organizations and the cost of advertising in political publications;
- i) capital expenditures, which are expenditures to acquire or create depreciable assets that have a normal economic life of more than 1 year;
- j) personal and non-business expenses,
- k) dividend distributions to stockholders,
- l) office carpets, art works and decorative items.

Article 13. Treatment of transactions between related persons (Transfer Pricing Rule)

(1) Transfer price pertains to a price related to transactions of funds or creation of obligations between related persons.

(2) In the case of transactions from paragraph 1 of this Article, the Tax Administration may increase the amount of revenue or expense in order to reflect the market price of goods and services provided in transaction.

(3) The Minister of Finance shall prescribe the manner of determining transaction market value.

Article 14. Provision for Bad Debts and Reserves

(1) A legal person using the accrual form of accounting is allowed a deduction with respect to bad debts and reserves only as provided in this Article.

(2) In the case of a legal person other than a bank, other authorized credit institution or insurance company a deduction is allowed as follows:

- a) the legal person shall be entitled to a bad debt deduction that arose in connection with a sale of goods or services but only if the revenue from the sale was previously included in the tax base of the legal person. For this purpose, a credit or trade receivable is considered a bad debt only if it is more than 12 months overdue commencing on the due date for payment of the invoiced credit or receivable.
- b) This paragraph is not to apply to un-collectable credits and receivables that arose prior to the effective date of this law.

(3) In the case of a bank or other authorized credit institutions, a deduction is allowed for increases in the reserve account for customary losses due to unpaid loans. The amount of such reserve may not exceed 75% of the tax base.

(4) In the case of an insurance or reinsurance company, a deduction is allowed for increases in technical reserves as registered in accounting documents and as authorized according to applicable law. For insurance contracts pertaining to reinsurance, technical reserves are to be reduced so that they cover only the part of the risk remaining with the insurer. The amount of such reserve may not exceed 75% of the tax base.

(5) The tax savings resulting from a reduction or cancellation of any reserve that was previously deducted in the profit of the taxpayer shall be repaid in the year of such reduction or cancellation. This paragraph is not to apply if another taxpayer takes over a reserve in connection with a liquidation, division or merger and the rules of this article continue to apply to such reserve.

Article 15. Depreciation

(1) Depreciation deductions are allowed only with respect to depreciable assets placed in service in FBiH.

(2) For purposes of this article a depreciable asset is any tangible or intangible asset that is held for use in the production or supply of goods and services, for rental to others, or for administrative purposes. Land or any other asset that does not decrease in value through wear and tear or obsolescence is not considered a depreciable asset.

(3) Tangible depreciable assets in the form of machinery and equipment shall be allowed, at the Taxpayer's option, an accelerated depreciation deduction in the following manner:

- (a) First year: 40% of the cost
- (b) Second year: 30% of the cost
- (c) Third Year: 30% of the cost

(4) Depreciable assets having a purchase price less than 1,000KM may be deducted in full in the year of purchase, provided the assets are placed in service in FBiH.

(5) Computer hardware and software may be deducted in full in the year of purchase provided the computer hardware and software are placed in service in FBiH.

(6) If the costs of repair or maintenance to depreciable assets exceeds 5% of the adjusted basis of the asset at the beginning of the tax period, the repair cost shall be added to the adjusted basis of the asset for depreciation purposes.

(7) The Minister of Finance is to issue Rules regarding the determination of depreciation deductions upon all depreciable assets. The Rules are to include guidance regarding the normal period of operation and entry values of depreciable assets and the treatment of depreciable assets that are temporarily or permanently removed from operation.

Article 16. Leasing contracts

(1) For purposes of this Article a Lessee means a Legal person who is granted the use of property in exchange for periodic payments to the person granting the use of such property. A Lessor means the legal or physical person who grants the use of property in exchange for receiving periodic revenue from the legal person which has been granted the use of such property.

(2) The following rules are to apply to Financial Leases. Financial Lease as regulated in the Rule Book means that the Lessee is considered the owner of the property, since the transaction represents a sale of the asset:

- a) the lessee is to be treated as the owner of the leased asset and is entitled to depreciation deductions with respect to the leased asset;
- b) the lessee's payments to the lessor are to be apportioned between principal and interest in accordance with lending principles used by banks and other authorized credit institutions;
- c) the interest payable under the financial lease is to be included in the tax base of the lessor and is deductible by the lessee.

(3) The following rules are to apply to Operating Leases. Operating Leases as regulated in the Rule Book means that the Lessor is considered the owner of the property.

- a) the lessor is to be treated as the owner of the leased asset and is entitled to depreciation deductions with respect to the leased asset;
- b) the rent payable under the operating lease is to be included in the taxable base of the lessor and is deductible by the lessee.

Article 17 Gain on sale of capital and investment assets

A. Capital Asset

(1) A capital asset for the purpose of this law shall mean depreciable property used by the legal person for the purpose of its economic activity.

(2) For the purpose of determining capital gain upon the sale or transfer of a capital asset gain shall be the difference between the sales price and the adjusted basis of the asset, subject to the rules of transactions between related persons Article 13 and tax avoidance Article 41.

(3) Losses from the sale of capital assets may be applied to the determination of the legal person's tax base.

B. Investment Asset

(1) For the purpose of determining gain from the sale of an investment asset, the gain shall be the difference between the sales price and the basis of the investment asset. The basis of the investment asset may be increased by the expenses attributable to the purchase of the investment asset and the sale of the investment asset.

(2) Losses attributable to the sale of investment assets may only be used to offset gains from the sale of investment assets. Unused losses may be carried forward for a period of 5 years from the year of the loss.

Article 18. Fiscal losses

(1) If the deductible expenditures for any fiscal year exceeds the revenues for such fiscal year, the difference, which is hereafter referred to as a "fiscal loss", is to be carried over for up to 5 fiscal years and is to be used to reduce the tax base for such fiscal years.

(2) If a legal person has a fiscal loss in more than one fiscal year, the fiscal loss from an earlier fiscal year is to be used before the fiscal loss from a later fiscal year.

(3) In the case of foreign legal persons and RS and DB legal persons carrying out economic activity through a permanent establishment in FBiH, this article is to apply by taking into account only the taxable revenue and deductible expenditures that are attributable to such permanent establishment.

(4) In the case a foreign permanent establishment of a FBiH legal person produces a loss, such loss is not available against the FBiH's legal person's domestic tax base.

(5) If more than 10% of the stock in a legal person are acquired by another legal person, than any unused fiscal loss of the acquired legal person on the date of the acquisition may be used only to reduce the profit that is attributable to an economic activity that was carried out by the acquiring legal person prior to the acquisition.

Article 19. Foreign currency exchange gains and losses

(1) Foreign currency exchange gains and losses shall be separately included in the calculation of tax base in the event the legal person receives revenue or loans or pays expenses or repays a loan in a foreign currency. Foreign currency fluctuations shall be calculated pursuant to Article 40, paragraph (3)(b).

(2) In the case of foreign currency loans the following shall apply:

- a) in regard to the repayment of principal, the debtor and the creditor are to recognize as gain or loss the difference between the value in BiH currency of the loan principal at the time the loan is made and its value in BiH currency at the time the principal is repaid;
- b) in regard to rollovers or refinancing a foreign loan, the provisions of subparagraph a) shall apply to the new loan;

(3) In the case where there exists a currency fluctuation between the time any item of revenue is derived or expense is incurred on the accrual basis and the time the revenue is actually received or the expense actually paid, the difference between the currency value of BiH currency and the foreign currency is recognized as a foreign currency exchange gain or loss.

Article 20. Mergers and liquidations and other transfers of assets and stock

(1) If legal persons or group of physical persons contribute assets to a legal person in exchange for stock in such legal person and the legal person or group of physical persons that contribute the assets own 10% or more of the stock in the legal person immediately after the contribution, the following rules are to apply:

- a) the contribution of assets and the issuance of stock are not to be treated as taxable transfers;
- b) the basis of each contributed asset received by the legal person is to equal the basis of such asset to the legal or physical person that contributed such asset;
- c) the basis of the stock received by the legal or physical person that contributed the assets is to equal the basis of the assets contributed by such legal or physical person.

(2) The distribution of assets by a legal person to its stockholders may be treated as a taxable transfer of the assets for purposes of this Law, except as provided in paragraph (3).

(3) If a legal person distributes assets in connection with its liquidation and the person that receives the assets is a legal person that owns at least 10% of the stock in the liquidating legal person immediately before the liquidation, the following rules are to apply:

- a) the distribution of assets is not to be treated as a dividend or as a taxable transfer;
- b) the return of stock to the liquidating legal person is not to be treated as a taxable transfer;
- c) the basis of each asset received by the stockholder from the liquidating legal person is to equal the same basis of such asset to the liquidating legal person.

(4) If assets or stock are transferred in connection with a reorganization that does not have tax avoidance as a principal objective, the following rules are to apply:

- a) the transfer of assets between legal persons that are parties to the reorganization is not to be treated as a taxable transfer;
- b) the exchange of stock in a legal person that is a party to the reorganization for stock in another legal person that is a party to the reorganization is not to be treated as a dividend or as a taxable transfer;
- c) the distribution of stock in a legal person that is a party to the reorganization to a person that owns stock in another legal person that is a party to the reorganization is not to be treated as a dividend;
- d) the basis of an asset described in letter a) to the person that received such asset is to equal the basis of such asset to the person that transferred such asset;
- e) the basis of the stock described in letter b) that are received by a person is to equal the basis of the stock that are transferred by such person;
- f) the basis of the stock described in letter c) that were owned prior to the distribution is to be allocated among the prior held stock and the distributed stock in proportion to the market price of the stock immediately after the distribution;
- g) A legal person that receives assets in a reorganization is to take over the accounting method, depreciation method and unused fiscal losses of the legal person that transfers such assets except as provided in this Law or in norms issued by the Minister of Finance.

(5) For purposes of paragraph (4), a reorganization is:

- a) a merger of one or more legal persons transferring all of their assets and liabilities to an existing legal person in exchange for 10% or more of the securities or shares in the receiving legal person, and if applicable, a cash payment not exceeding 10% of the par value of the securities or shares received.

- b) a merger of two or more legal persons transferring all of their assets and liabilities to a legal person that they formed in exchange for 10% or more of the securities or shares in the receiving legal person, and if applicable, a cash payment not exceeding 10% of the par value of the securities or shares received..
- c) the acquisition of 10% or more of the stock in a FBiH legal person solely in exchange for stock in a legal person that is a party to the reorganization;
- d) the acquisition 10% or more of the assets of a FBiH legal person or a permanent establishment in FBiH by a FBiH legal person solely in exchange for stock in a legal person that is a party to the reorganization;
- e) a division of a FBiH legal person into two or more FBiH legal persons whether or not the original legal person remains in existence;
- f) Sub-sections a to e of this Section 5 shall be equally applicable to cross-border mergers involving a FBiH legal person.

(6) For purposes of paragraph (4) and (5), a party to the reorganization is:

- a) any FBiH legal person that is directly involved in the reorganization;
- b) any FBiH legal person that controls a FBiH legal person that is directly involved in the reorganization;
- c) any FBiH legal person that is controlled by a FBiH legal person that is directly involved in the reorganization;

For purposes of this paragraph, control means the ownership of 10% or more of the stock in a legal person.

7) In case of cross border mergers and reorganization between FBiH legal person and foreign legal person, the same rule applies except that control is reduced from 50% or more to 10% or more share in ownership.

Article 21. Associations for joint economic activities

(1) The term “association for joint economic activities” means two or more, but less than 10, independent legal persons contractually join to perform a joint economic activity.

(2) The association is exempt from paying the enterprise tax. However, each separate legal person that is a member of the association shall include and make a part of its fiscal year tax base, the fiscal year profit of the association in proportion to its contractual participation interest in the association, whether or not profit is distributed to such legal person. Fiscal losses, however, may only be allied against a member’s proportionate share of association profit up to the member’s basis in the association. Excess loss may be carried forward for a period of 5 years against the member’s proportionate share of association profit.

(3) The gain from the sale of the association assets for purposes of inclusion into a legal person’s Annual Tax Declaration is limited to the amount that is larger than the legal person’s basis in the association. Basis means the legal person’s original investment into the association, increased by the legal person’s proportional share of undistributed profit and decreased by profit that is distributed and the legal person’s share of association losses. If losses exceed basis, the losses may be carried forward for a period of 5 years to offset gains attributable to the future sale of association assets. The association’s losses may not be used by the legal person to reduce its tax base, unless the loss is as a result of the member’s complete liquidation of membership in the association.

(4) The association shall appoint one of the member legal persons who is a resident of FBiH as the Tax Manager for the purpose of maintaining the books and records, payment of advance enterprise tax and filing a year end tax declaration in the same manner as if the economic activity was conducted as a single legal person. The Tax Manager shall provide information regarding the proportional profit or loss of each member legal person and the portion of advance tax attributable to each member legal person.

(5) The Tax Manager described in paragraph 4 is to provide a writing to each legal person that is a member of the association stating the portion of the tax base of the association profit or loss of such legal person and the amount of advance enterprise tax paid and attributed to such legal person.

CHAPTER V *International Provisions*

Article 22. Incomes from a permanent establishment

(1) A foreign legal person carrying out economic activity through a permanent establishment in FBiH is to pay enterprise tax on the tax base that is attributable to the permanent establishment.

(2) The tax base of a person described in paragraph (1) is to be determined in accordance with the rules provided in Chapter IV of this Law, except that:

- a) only revenue that is attributable to the permanent establishment is to be included in determining the tax base;
- b) only expenditures that are related to the realization of such permanent establishment revenue are to be included in deductible expenditures.

(3) If an association for joint economic activity carries out an economic activity through a permanent establishment in FBiH, then each foreign legal person that is a member of the association is considered to be carrying out the economic activity through a permanent establishment in FBiH.

Article 23. Revenue from immovable property

(1) A foreign legal person obtaining revenue from immovable property located in FBiH is to pay enterprise tax on the profit attributable to such revenue.

(2) Revenue from immovable property located in FBiH includes the following:

- a) revenue from the rental of, or other grant of the right to use, immovable property located in FBiH;
- b) gain from the transfer of ownership rights or any other rights related to immovable property located in FBiH;
- c) gain from the transfer of stock in a legal person if the majority of the value of the tangible assets of the legal person (either directly or through one or more legal persons) is immovable property located in FBiH;
- d) revenue obtained from the exploitation of natural resources located in FBiH, including gain from the transfer of any right related to such natural resources.

(3) The tax base for immovable property located in FBiH is to be determined in accordance with the rules provided in Chapter IV of this Law and an Annual Tax declaration must be filed.

Article 24. Reduction in Enterprise Income Tax for payment of Foreign Income Taxes

(1) If a FBiH legal person obtains revenue from a foreign state and the revenue is taxed both in FBiH and in the foreign state, then the tax paid to the foreign state, whether paid directly or withheld and remitted by another person, is to be credited from the FBiH enterprise tax, unless such FBiH legal person elects to treat the foreign tax as a deductible expenditure in determining the fiscal year tax base.

(2) The reduction to the FBiH enterprise tax for the payment of foreign tax for a fiscal year is not to exceed the enterprise tax calculated by applying the rate of enterprise tax of such person for such fiscal year. Any excess foreign tax is to be carried over for up to 5 fiscal years and is to be subject to the same limitations for such fiscal years.

(3) A FBiH legal person may reduce the FBiH enterprise tax by foreign taxes or may deduct foreign taxes in determining the tax base if the legal person presents adequate documentation certified by the fiscal authorities of the foreign state that the tax was paid to the foreign state.

CHAPTER VI

Withholding of Tax from Revenue Earned in FBiH by Foreign Legal Persons

Article 25. General provisions

(1) Any legal or physical person described in paragraph (2) that pays revenue as defined in Article 26 to a foreign legal person is to withhold tax from the total payment of revenue and is to remit the withheld tax to the Tax Administration Office as provided in this Chapter.

(2) The following persons are to withhold tax from revenue paid to a foreign legal person and are to remit the withheld tax to the Tax Administration Office:

- a) any FBiH legal person;
- b) any resident physical person;
- c) any foreign legal person or non-resident physical person with a permanent establishment in FBiH.

(3) The tax withheld in accordance with this Chapter with respect to any revenue of a foreign legal person is the final tax of the foreign legal person with respect to such revenue.

Article 26. Revenues to which the withholding tax applies

(1) The withholding of tax applies to the following revenue payments, regardless whether the revenues are received in FBiH or abroad:

- a) payment of interest or its functional equivalent under financial instruments and arrangements from a resident, except as excluded under paragraph (2) (e) of this Article;
- b) payment for entertainment or sporting activities carried out in FBiH regardless whether the revenue is received by the entertainer or sportsman or by another person;
- c) payment for the performance of management, consulting, financial, technical or administrative services, if the revenue is from a resident or if the revenue is paid by or included in the books and records of a permanent establishment in FBiH if such payment is deducted for the purpose of determining tax base;
- d) payment for the performance of services in FBiH;
- e) payment in the form of insurance premiums for the insuring or reinsuring of risks located in FBiH;
- f) payment for telecommunication services between FBiH and a foreign state;
- g) payment of royalties, except as excluded under paragraph (2) (f) of this Article..
- h) Leasing of equipment

(2) The withholding of tax does not apply to the following revenue :

- a) repatriated profit to a foreign legal person that is attributable to its permanent establishment or to the foreign legal person's subsidiary in FbiH, provided the foreign legal person owns 10% or more of the stock of the FbiH subsidiary. Repatriated profit means the legal person's remaining profit after payment of taxes;
- b) revenues in the form of interest from debt instruments issued and/or guaranteed by any BiH governments, territorial units, the Central Bank of BiH, and banks or other financial institutions acting as an agent of the BiH governments;
- c) revenue in the form of interest from deposits with a bank located in BiH;

- d) revenue in the form of dividends ,
- e).revenue in the form of interest or its functional equivalent paid on a debt obligation between a permanent establishment or subsidiary to its foreign parent, if no corresponding deduction was taken by the payor of the interest in computing its tax base;
- f) revenue in form of royalties paid by a permanent establishment or subsidiary to its foreign parent, if no corresponding deduction was taken by the payor in computing its tax base;
- g) revenue in the form of gain from the sale or transfer of investment property.

(3) For purposes of this Chapter, a royalty is any amount required to paid in money or in kind for the use of, or the right to use, any of the following:

- a) any copyright of a literary, artistic or scientific work, including films or tapes for radio or television broadcasts or other transmissions to the public, and audio or video recordings;
- b) any patent, invention, innovation, license, trademark, trade name, franchise, design, drawing, model, plan, sketch, secret formula or production process, or software;
- c) any direct or indirect cable transmission, relay transmission, or satellite transmission;
- d) any information or knowledge concerning industrial, commercial or scientific experience;
- e) the name or image of any physical person or other similar rights with respect to a physical person;
- f) the right to record or broadcast a performance, show, sporting event or other similar activity.

(4) For purposes of this Chapter, a resident is any FBiH legal person and any resident physical person.

Article 27. Tax to be withheld

(1) The tax to be withheld from revenue payments to a foreign legal person is 3% of the total revenue paid.

(2) For purposes of paragraph (1), the total revenue is the revenue that would have been paid to the foreign legal person if tax had not been withheld from the payment of the revenue.

Article 28. Coordination with treaties regarding taxes on revenue and capital

(1) If the beneficiary of revenue to which the withholding of tax applies is a resident of a foreign state that has entered into a treaty with BiH regarding taxes on revenue, then for purposes of Article 27 the tax rate applicable to each such source of revenue is not to exceed the tax rate applicable to such source of revenue that is specified in the treaty.

(2) An exemption from tax or a lower rate of tax specified in a treaty with a foreign state is to apply to revenue to which the withholding of tax applies only if the legal person beneficiary of the revenue provides to the payer of the revenue a certificate of establishment or residence issued by the Government of the foreign state or other evidence of residence specified in the Rule Book to this Law.

Article 29. Payment of withheld tax to the Tax Administration Office

The tax that is required to be withheld in accordance with the provisions of this Chapter is to be remitted to the Tax Administration Office on or before the 15th day of the month that follows the month in which the revenue payment was made.

Article 30. Annual Withholding Tax declaration

(1) Any person that is required to withhold tax in accordance with the provisions of this Chapter is to submit an annual withholding return to the Tax Administration Office on or before the 28th day of February of the year that follows the year in which the tax is required to be withheld.

(2) The withholding return for a year is to include the following information for each foreign person on whose behalf tax is required to be withheld for such year:

- a) the name of the legal person and the country of its establishment;
- b) the type and the total amount of revenue to which the withholding of tax applies;
- c) the amount of tax required to be withheld;
- d) the amount of tax withheld and remitted to the Tax Administration Office.

CHAPTER VII

Micro-enterprise fee

Article 31. General provision

A micro-enterprise as defined in Article 32 may elect to pay a micro-enterprise income tax in accordance with the provisions of this Chapter instead of paying the enterprise income tax pursuant to Article 4 of this Law.

Article 32. Definition of micro-enterprise

For purposes of this Law, a micro-enterprise is a FBiH legal person that satisfies each of the following requirements throughout the fiscal year:

- a) the legal person carries out an economic activity other than banking or financial services, or insurance activities;
- b) the number of employees of the legal person does not exceed 9;

- c) the total annual revenue received by the legal person from any source does not exceed 80,000 KM;
- d) the legal person did not receive more than 80% of its total revenue from a single client/customer or a person related to such client/customer;
- e) all of the stock in the micro-enterprise was owned by not more than two physical persons.

Article 33. Micro-Enterprise Tax

The annual micro-enterprise tax is 5% of the legal person's total annual revenue.

Article 34. Monthly Payment of Tax

The micro-enterprise shall pay to the Tax Administration 5% of its total monthly revenue within 15 days of the following month.

Article 35. Maintenance of accounting records and use of electronic cash register

(1) A micro-enterprise is to maintain accounting records pursuant to the cash method of accounting, meaning revenue is recognized when it is actually received by, or made available to, or applied to the benefit of the legal person and expenses are incurred when they are paid.

(2) A micro-enterprise that provides goods or services directly to the population in retail transactions is required to keep of record of sales and total revenues through the use of fiscal equipment.

Article 36. Electing Micro-Enterprise

(1) In the case a legal person is established for the first time during a calendar year and elects to be recognized as a micro-enterprise for such year, the legal person is required within a period of 30 days from establishing its entity to submit a notification to the Tax Administration Office. In such notification the legal person must detail its qualification under Article 32. The form of notification shall be prescribed by the Minister of Finance.

(2) For purposes of applying the rules of this Chapter to a legal person that has been in operation in prior years, the legal person must submit its notification to the Tax Administration Office with documentary proof of its qualification pursuant to Article 32 prior to January 31 of the year to which the micro-enterprise status is to apply.

Article 37 Annual Information Declaration

A Micro-Enterprise shall file prior to January 31 of the succeeding year an annual information declaration in the form prescribed by the Minister of Finance along with the balance of unpaid micro-enterprise tax due for the fiscal year.

Article 38 Revocation of Micro-Enterprise status

(1) If a micro-enterprise fails to satisfy the requirements of Article 32 during any part of a calendar year, or renounces its election to be taxed as a micro-enterprise, then the micro-enterprise status of the legal person is revoked.

(2) In the year of revocation, the micro-enterprise shall file an annual tax declaration and pay the enterprise income tax pursuant to Article 4, crediting from any enterprise income tax due the amount of micro-enterprise tax paid during the year of revocation.

(3) If the micro-enterprise status of a legal person is revoked pursuant to paragraph (1), then neither the legal person nor stockholders owning more

than 10% of the stock in the revoked micro-enterprise may reapply for micro-enterprise status or establish a new micro-enterprise.

CHAPTER VIII

Miscellaneous Provisions

Article 39 Consolidated Annual Tax Declaration

Consolidated Annual Tax Declarations are limited to:

(1) An affiliated group of legal persons may elect to file a Consolidated Annual Tax Declaration in accordance with the Rule Book to this Law.

(2) For purposes of this Article an affiliated group of legal persons is a group of one or more F BiH legal persons that are connected through the ownership of stock with a common parent provided that:

(i) the common parent owns at least 80% of the stock in at least one other legal person that is included in the affiliated group; and

(ii) if the common parent does not own at least 80% of the stock in a legal person that is included in the affiliated group, then the parent may file a consolidated return if one or more other legal persons that are included in the affiliated group own at least 80% of the stock in such legal person;

(3) If a foreign legal person has two or more permanent establishments performing economic activity within F BiH, the foreign legal person may aggregate the economic activity of each permanent establishment for the purpose of determining tax base and filing a consolidated Annual Tax Declaration.

(4) A foreign legal person with operations in FBiH and RS or/and DB is required to pay and file tax declarations with the Tax Administrations in BiH for profits earned in each BH Tax jurisdiction where its business unit is located, the exception being treatment of taxpayer under the Article 8, par.3.

(5) All legal persons headquartered in the FBiH with operations in the other BiH jurisdictions (i.e. have a fixed base or presence) of BiH must indicate on their annual tax declaration an analysis of the ratio of their total revenues realized in the FBiH and other jurisdictions in which they operate.

(6) The information submitted under Article 39(5) will be utilized by the Ministry of Finance and Tax Administration for determining the allocation of EIT revenues in cases of operations in multiple BiH jurisdictions.

Article 40. Currency for payment and for calculation of taxes and fees

(1) The enterprise income tax governed by this law is to be paid using the national currency of BiH.

(2) Amounts shown on any tax or information return are to be expressed in the national currency of BiH.

(3) Amounts expressed in a foreign currency are to be converted into the national currency of BiH as follows:

a) in the case of a legal person that carries out an economic activity in a foreign state that maintains its accounting records for such activity in the currency of such foreign state, the profit and the tax paid to the foreign state are to be converted to the national currency of BiH using the mean exchange rate in effect for the final day of the tax period to which the profit relates;

- b) in any other case, amounts are to be converted to the national currency of BiH on a transaction by transaction basis using the mean exchange rate in effect on the date when amounts are received or paid.

Article 41. Prevention of tax avoidance

In determining the amount of the enterprise tax for purposes of the present Law, the fiscal authorities may disregard any transaction that does not have an economic substance or may re-characterize the form of a transaction to reflect the economic substance of the transaction. The Tax Administration should liaise and cooperate with Tax Administrations in the other jurisdictions of BiH with the aim of prevention of excessive tax avoidance.

Article 42 Books and Records

(1) The following are the basic books and records required to be currently maintained in the taxpayer's principal place of business in FBiH and available for examination by the Tax Administration:

1. General Journal of Revenue and Expenses.
2. Cash Receipts and Disbursement Journal.
3. Register of all depreciable property.
4. Register of all liabilities.
5. Registers on inventory, receivables, reserves and payables.
6. Copies of all invoices issued and received.
7. Such other records as may be prescribed by the Rule Book.

(2) The business books and records shall be maintained by the accrual method of accounting providing the legal person's total annual revenue exceeds 80,000KM. A legal person, which does not qualify as a micro

enterprise, but has annual revenue less than 80.000 KM may choose to use the accrual method of accounting. A legal person having once maintained its books and records on the accrual method, may no longer use the cash method of accounting despite having total annual revenue less than 80,000KM unless such legal person qualifies as a micro-enterprise pursuant to Article 32.

(3) Exceptions to the Accrual Method of Accounting:

a. In the case of a payment of revenue to which a withholding tax applies pursuant to Chapter VI, the payment of revenue shall be reported by the cash method of accounting.

b. The Rule Book shall specify the accounting treatment in the case of a loan between persons using different accounting methods, treatment of equivalent forms of interest under financial instruments and arrangements, instalment sales, long-term contracts, accruing liabilities and such other transactions that the Minister of Finance may deem necessary adjustments to the accrual method of accounting.

CHAPTER IX

Administrative provisions

Article 42. Determining the Tax Payment

The profit tax is self-assessed and its payment is based on the declarations of the taxpayer. The taxpayer completes the required forms, provides the required information, and makes payment in accordance with the law. The taxpayer is obliged to submit the tax declaration sheet completed with correct information, to the authorized tax administration branch within 30 days from the end of the deadline determined for submitting the annual accounting of business results.

Article 43. Determining the Tax Payment for New Taxpayers

The newly established taxpayer is obliged to submit the tax form in which he/she gives an estimation of profit to the end of the tax year within 30 days from the day he/she started doing business.

Article 44. Tax Payment for Taxpayers in Liquidation

1. If the taxpayer is under the procedure of liquidation, the person who does the liquidation procedure is obliged to submit to the authorized tax administration branch, within 30 days from the day of the opening of the session about the main partition of liquidation mass, the previous tax return in regards to the profit made in the liquidation year.
2. The final determination of tax from paragraph 1 of this article is done based on the tax declaration, which is submitted by the person handling the procedure of liquidation, to the authorized tax administration branch within 15 days from finishing the liquidation procedure.

Article 45. Non-Timely Payment of the Tax

1. If the taxpayer does not pay the profit tax within the regulated deadline, the authorized tax administration branch will issue a decision for informed payment through the allocation of revenues from the taxpayer's account to the adequate tax payment account.
2. If by using the method from paragraph 1 of this article the full tax amount is not obtained, the authorized tax administration branch proclaims a decree about the informed tax payment from the taxpayer's overall assets.
3. The costs of the informed payment are at the burden of the taxpayer.

Article 46. Determining the Advanced Payment

1. The taxpayer is responsible for making advanced payments to the tax administration's respective office on a monthly basis.
2. The advanced payment must be equivalent to the greater of the following, either:
 - a. The monthly advanced payment must be equal to one twelfth of the entire profit tax liability of the taxpayer in the previous year, or
 - b. The cumulative monthly payments throughout the tax year must equal 90% of the total tax obligation for the same year.

Article 47. Timely Payment of the Tax

On the amount of the profit tax obligation that has not been paid within the deadline determined by the law, interest will be in the amount determined by a Law on the height of late interest on public revenues

Article 48. Refunds of Overpayment of Tax

1. The taxpayer is entitled to a refund of any overpayment of tax that he may have made to the tax administration.
2. The Tax Administration is required to provide immediate due process to any taxpayer's application for a refund of overpaid tax and must make an official determination of the correctness of the application within 30 days of receiving the application for refund from the taxpayer.
3. The taxpayer is entitled to interest payment from the Tax Administration on the amount that he has overpaid, beginning 30 days after the determination by the Tax Administration that the taxpayer is entitled to a refund. The rate at which interest will be paid is determined in the Law on the amount of late interest on public revenues
4. If the Tax Administration does not determine the amount to be refunded within the 30 days that are required, the Tax Administration shall pay the taxpayer interest due from the time the taxpayer applied for the refund, rather than from the day that the Tax Administration made the determination.

Article 49. Obsolescence

The right to determine and collect tax, interest and costs of enforced collection and money penalties proclaimed by the provisions of this law, obsolete in five years when the year in which the determination, i.e., collection of tax, interest, enforced collection costs, and money penalties is ended.

Article 50. Confidentiality

1. Information obtained during the procedure of profit tax determination, is considered to be an official secret, and shall not be shared with other taxpayers or non-authorized individuals and bodies.
2. Based on a request from the taxpayer, he/she will be given permission to see all information that is important for determining the corporate income tax.

CHAPTER X Penalty Provisions

Article 51. General Provisions

The taxpayer will pay monetary fines in national currency of BiH in accordance with those established by the RS/Federation Ministry of Finance.

Article 52. Financial Penalties Applied to the Taxpayer

1. The taxpayer is responsible for the timely and accurate submission of all tax filing requirements as specified in the law. Violations of this requirement may result in fines ranging from 1,000 KM to 20,000 KM for not fulfilling these requirements.
2. The taxpayer may be fined for violations under the following circumstances:
 - a. If in the stated period the taxpayer does not submit the tax return, or if the information in the tax return is incorrect, which would lead to the decrease of the tax base or having the right for tax refund;
 - b. If in the determined deadline the taxpayer does not submit the form for the payment of the monthly tax advance .
 - c. The taxpayer does not properly or completely calculate and pay withheld profit tax on payments made to non-residents;
 - d. The taxpayer does not show separately of the tax balance the value of transactions with linked persons in coordination with the “out of hand’s reach” principals;

CHAPTER XI

Transitional and Final Provisions

Article 53. Implementing Book of Rules

The Profit Tax Book of Rules regulating and clarifying this law will be proclaimed by the Federal Minister of Finance, within 60 days from the day this law comes in to force.

Article 54. Repeal

On the day this law comes in to force, all other laws and regulations by which the taxation of profit of legal entities existed in the territory of the Federation are no longer valid.

Article 55. Enter into Force

This law comes to force 8 days after it’s publication in the “Official Gazette of Federation of BiH”, and it will be implemented from January 1, 2006.